

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING
OCTOBER 27, 2004**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 27, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Schmidt
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Tarmann

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Robert Rowlands, BA04:075, petitioner
Kevin and Linda Hoadley, BA04:078, petitioners
Phil and Kathleen Bouché, BA04:081, petitioners
Jan Epstein Gibeau, BA04:081, neighbor
Lawrence W. Babb, BA04:082, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of October 13, 2004.*

The motion was seconded by Mr. Schultz and carried with four yes votes. Mr. Dwyer abstained because he did not attend the meeting of October 13, 2004.

NEW BUSINESS:

BA04:075 ROBERT ROWLANDS - Petitioner (Held in abeyance from October 13, 2004)
RICHARD P. KIPP - Owner

Mr. Schmidt *I move to deny the request of Mr. Kipp and Mr. Rowlands. The reasons for denial are as follows:*

They have not shown any reasonable basis to retain the farm buildings (accessory outbuildings).

The barn is in violation of the existing ordinance requirement for height.

Section 3.04 (1) of the Ordinance should be adhered to and if the existing residence is removed, the accessory buildings should be removed also.

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Bartholomew voted no.

The staff's recommendation was for approval, with the following condition:

A Letter of Credit must be filed with the Waukesha County Planning and Zoning Division Staff, prior to the demolition of the existing residence, to ensure that a new home is constructed on the property or the accessory structures are removed within two (2) years of this decision, unless extended by the Board of Adjustment, without the necessity of a new public hearing. The Letter of Credit must be for \$10,000 or an amount equal to 110% of a cost estimate from a licensed contractor for removing the accessory structures.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approved request for a variance, with the recommended condition, will allow the petitioner to remove the existing residence from the property and retain the existing accessory buildings. The Letter of Credit will ensure that a new home is constructed on the property or that the accessory structures will be removed within two years. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended condition, is in conformance with the purpose and intent of the Ordinance.

BA04:078 KEVIN AND LINDA HOADLEY

Mr. Dwyer

I make a motion to approve the staff's recommendation for denial, as stated in the Staff Report.

The motion was seconded by Mr. Schmidt and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Removal of the non-conforming deck would not prevent the use of the property for a permitted use, i.e. for a single-family residence. Further, denial of the requested variances

would not be unnecessarily burdensome since a 4 ft. wide walkway would be permitted and a permeable material, such as one-quarter inch granite mulch, could be placed in the area now occupied by the deck.

The second requirement for a variance is the existence of unique physical conditions, which are not self-created and which prevent compliance with the Ordinance requirements. The physical limitations of the property, not the personal circumstances or desires of the property owner, are the basis for this test. Although the shallow depth of that portion of the property on the south side of Valley Rd. make it impossible to construct a deck in conformance with the shore and floodplain setback requirements or the road setback requirements, these limitations are not unique to the property, as several other lots along the north shore of Silver Lake are similarly configured, with only minimal area on the south (lake) side of Valley Rd.

The third requirement for a variance is that the variance must not adversely affect the general public interest or be detrimental to nearby properties or the natural resources in the area. The purpose and intent of the Ordinance is to "...prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and preserve shore cover and natural beauty." Although this deck is relatively small, the cumulative effect of structures near the lake is detrimental to the water quality of the lake and the deck does not contribute to a natural scenic shoreline. Therefore, the approval of the requested variances would not be in conformance with the purpose and intent of the Ordinance.

BA04:080 KEITH AND JOYCE HENSON

Mr. Ward *I make a motion to dismiss this case because the petitioners are not present, unless within 15 days the matter is either heard or the petitioners waive the 15 day limit for a decision, in which case the hearing will be re-scheduled as soon as possible.*

The motion was seconded by Mr. Schultz and carried unanimously.

A discussion was held regarding the need to re-notice the public hearing, unless the case is adjourned to a specific date.

Mr. Ward *I amend my previous motion and move that this case be held in abeyance until the meeting of November 10, 2004.*

The amended motion was seconded by Mr. Schultz and carried unanimously

BA04:081 PHIL AND KATHLEEN BOUCHE

Mr. Dwyer *I move to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The previous variance (BA02:040) granted on May 22, 2002, authorizing replacement of the existing detached garage with a larger detached garage, is hereby declared to be null and void.
2. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the new residence, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. The footprint of the new residence and attached garage may not exceed 1,504 sq. ft. and the total floor area of the new residence and attached garage may not exceed 2,176 sq. ft., as proposed.
4. The new residence and attached garage must be located in conformance with the shore setback and offset requirements (at least 55.8 ft. from the lake and at least 10 ft. from the side lot lines). The attached garage shall be no closer than 45.9 ft. from the edge of the 30 ft. wide platted road right-of-way of Hill Ct. The required setbacks and offsets noted above shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the lake, the side lot lines, and the road as the overhangs exceed two (2) ft. in width.
5. This approval does not authorize the construction of any decks or patios. Any future decks or patios will require additional variances.
6. The new residence may not have a full basement. If it is constructed on a crawl space, the floor of the crawl space must be at or above the 100-year flood elevation of 870 ft. above mean sea level.
7. The first floor elevation of the new residence and the floor of the attached garage must be at or above the flood protection elevation of 872 ft. above mean sea level.
8. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Planning and Zoning Division staff, prior to proceeding with construction.
9. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. The area around the residence shall be filled to an elevation of at least 871 ft. above mean sea level, with the fill extending at that elevation for at least 15 ft. beyond the structure, wherever possible. Where that is not possible, due to lot line constraints, the fill shall extend at that elevation as far as possible, without resulting in slope conditions that would adversely affect surface water drainage onto the adjacent properties.

11. Prior to the issuance of a zoning permit, a Plat of Survey showing the staked-out location and elevation of the proposed residence and attached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
12. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 11.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Hardships and physical limitations exist due to the size of the lot and the location of the 100-year floodplain. Since the lot area is only 7,535 sq. ft., it is impossible to conform with the minimum open space requirement of 10,000 sq. ft. Conformance with the maximum permitted floor area ratio of 15% would permit a residence and attached garage of only 1,130 sq. ft., which, even with no garage, would not permit a residence in conformance with the minimum required house size of 1,300 sq. ft. A residence in conformance with the floodplain setback requirement could not be located on the property because the only area outside of the 100-year floodplain is within the shore setback area.

Approval of the requested variances, with the recommended conditions, will permit a reasonable use of the property in the form of a new residence and attached garage, elevated above the 100-year floodplain, with a conforming shore setback and offset. Approval of the requested road setback variance will not cause a safety hazard because Hill Ct. is a minor dead-end road, serving only one residence beyond the subject property. The proposed residence and attached garage is modest in size, in keeping with other development in the area, and not contrary to the public interest. The first floor of the proposed residence exceeds the minimum first floor area required by the Town of Summit Zoning Ordinance by only 24 sq. ft. and the proposed attached garage is the same size as the previously approved detached garage. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:082 LAWRENCE W. BABB - Petitioner
JAMES KOUTNY - Owner

Mr. Bartholomew

I make a motion to approve the staff's recommendation, as stated in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following condition:

The proposed elevated deck/walkway on the east side of the residence must be located at least 6 ft. from the east lot line, in conformance with the offset requirement.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Although the approval of this request, with the recommended condition, will permit the residence under construction to remain slightly too close to the east lot line, the elevated deck/walkway to be located between the residence and the east lot line will have a conforming offset. The two-tenths of a foot encroachment of the residence into the sideyard offset is imperceptible and does not adversely affect the adjacent property and it is not contrary to the public interest. Further, it would be unnecessarily burdensome to require the two-tenths of a foot encroachment into the sideyard offset to be corrected at this point in the construction. Finally, the non-conforming offset of the residence is only temporary because the offset requirement will be reduced to 7 ft. when the property is served by municipal sewer in the future. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 7:59 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment